IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 99 of 1994
with
CIVIL APPLICATION NO.1235 OF 1994

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GEB

Versus

HAJI ABDUL RAHEMAN Y KASMANI MAHARASTRA DRY FISH SYNDICATE

Appearance:
1. Appeal from Order No. 99 of 1994
MR RC JANI for the Appellant
MR PN BAVISHI for the Respondent No.1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/10/2004

ORAL JUDGEMENT

The present Appeal from Order is preferred by the Gujarat Electricity Board challenging the order dated 23rd March, 2004 passed by the learned Civil Judge (SD), Junagadh, in Special Civil Suit No.20 of 1994 by which

the trial court has allowed the injunction application exh.5 preferred by the original plaintiffs.

2 The respondents herein are the original plaintiffs of Special Civil Suit No.20 of 1994. The said suit was filed by the partners of one Maharashtra Dry Fish Syndicate. The case of the original plaintiffs in the suit is that the plaintiffs have got electric connection from GEB and they were paying the electricity charges of the defendant company. It is further the case of the plaintiff that on 14.10.1992 the officer of the Gujarat Electricity Board came for the purpose of checking the electricity connection and opened the meter box and disconnected the electricity connection and took away the meter for laboratory testing after taking the signature of the employees of the plaintiff-firm. According to the plaintiffs, they have not committed any illegality or committed theft, yet the Board has issued them a supplementary bill under ABCD formula. The said bill was issued for Rs.1,42,928.28 on 20th October, 1992. According to the plaintiffs, the said bill is illegal and the same is issued in an arbitrary manner. The plaintiff has filed the aforesaid suit for declaration and injunction and during the pendency of the suit exh.5 application was given for a mandatory relief directing the defendant-board to reconnect the electric supply. The learned trial Judge passed cryptic order of few lines on 23rd March, 1994 by observing that if the direction is not given for reconnection of the electricity supply, the plaintiff is likely to suffer loss in his business. The trial court accordingly directed that on payment of 30% of the disputed bill, the defendant should reconnect the electric connection. It is the aforesaid mandatory order which is impugned in this Appeal from Order.

3 Learned advocate, Mr R.C.Jani, appearing for the appellant-Board has vehemently submitted that the trial court has not given any reasons before giving such a mandatory injunction as the order in question is a cryptic order. He submitted that such mandatory direction cannot be granted, which may amount to even allowing the entire suit at the interim stage. At the time of admitting the appeal, ad-interim order of staying the order of the trial court was passed and the matter has now reached the final hearing. The learned advocate for the respondents has not cared to remain present at the time of hearing of this Appeal from Order.

4 I have heard Mr R C Jani for the appellant-Board.
I have gone through the order of the trial court as well as the injunction application exh.5 which was submitted

before the trial court and which is annexed along with the papers of the Appeal from Order by the appellant. On behalf of the appellant-Board reply to the suit as well as application exh.5 was filed before the trial court wherein the appellant-board has stated in paragraph no.10 of the reply that at the time of inspection on 14.10.1992 it was found that certain irregularities were committed by the plaintiffs with the meter. Particulars of such irregularities are also described in paragraph no.10 of the reply. Subsequently, the plaintiff was served with a supplementary bill in ABCD formula in connection with the theft of electricity and since the plaintiffs have failed to pay the said bill, suit is also filed against the plaintiffs being Special Civil Suit No.95 of 1993, which is pending. It is stated in the reply that the plaintiffs have suppressed all these material facts. An averment is also made in paragraph no.16 of the reply that even though the connection was disconnected on 14.10.1992 the plaintiff has prayed for mandatory injunction on 15th March, 1994. In the aforesaid circumstances, it was prayed that interim injunction application is required to be rejected.

5 It is required to be noted that the electricity supply of the plaintiffs was disconnected by the Gujarat Electricity Board as back as in the year 1992 and the suit was filed in the year 1994. The learned trial Judge by passing the order of six lines granted mandatory injunction on 23rd March, 1994. It is a well settled position of law that mandatory injunction can be granted in rarest of rare cases, and that too when the plaintiff approaches the Court without any delay. The facts stated above would clearly show that under no circumstances such mandatory injunction could have been granted by the trial Court, more particularly considering the fact that the plaintiffs have approached the trial court by filing the suit practically after about 2 years. It is clearly pointed out that the plaintiffs have committed theft of electricity. Even otherwise, it was not a case in which any mandatory injunction could have been granted by the trial court in favour of the plaintiffs. On a raid being carried out by the officers of the Board, it was found that there was a tampering with the seal and the paper seal on the box could be opened easily. At the bottom of the meter, on the left side near the rivet, there was a hole through which wire could be passed. This aspect has been considered by the learned Single Judge of this Court in his order dated 4th May, 1994 while staying the order of the trial Court i.e. in Civil Application No.1235 of 1994. As pointed out earlier, even after serving the supplementary bill the appellant-Board was required to

file a civil suit for recovering the said amount. Thereafter the plaintiffs approached the civil court with a prayer for mandatory injunction. It is shocking that in spite of the aforesaid facts, the trial court has granted mandatory injunction asking the Board to reconnect the power supply of the plaintiffs. The Division Bench of this Court in the case of Kiran Industries v/s Gujarat Electricity Board reported in 1995 (2) GLR 1158 has held that though the Civil Court has jurisdiction to examine the legality and validity of the bill for consumption including higher charges at the instance of the consumer without his first approaching the appellate authority, no interim relief deserves to be granted to such consumer against disconnection of electric supply for non-payment of the bill under challenge in the suit.

6 Considering the aforesaid judgement of this Court, even otherwise, no injunction, as prayed for by the plaintiffs, could have been granted by the trial court in such type of cases. The order of the trial court granting mandatory injunction below application exh.5 dated 23rd March, 1994 is quashed and set aside. The appeal is accordingly allowed with no order as to costs.

7 In view of the order passed in Appeal from Order, no order is required to be passed on Civil Application No.1235 of 1994.

(P.B.Majmudar, J.)
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